

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3870 of 1984
with
SPECIAL CIVIL APPLICATION No 4626 of 1992

Date of decision: 26-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHETAN DAHYABHAI PATEL

Versus

THE VICE CHANCELLOR

Appearance:

1. Special Civil Application No. 3870 of 1984
MR RR MARSHALL for Petitioner
MR S. M. Mazgaonkar for Respondent No. 1, 2, 3
2. Special Civil Application No 4626 of 1992
MR RR MARSHALL for Petitioner
MR S. M. Mazgaonkar for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/07/96

ORAL JUDGEMENT

The petitioner in special civil application No.3870 of 1984 has challenged the notification annexure-B dated 27-6-1984 under which the petitioner's examination of Second Year B.Com. held in April 1984 was cancelled and he was ordered to be permanently debarred from appearing at any university examination and from joining any affiliated college or recognised institution of South Gujarat University. This order has been passed as the petitioner was found guilty of using unfair means at the university examinations held in April 1984. In special civil application No.4626 of 1984 the challenge is made to the notification dated 17th August, 1984 under which the petitioner's examination of second year B.Com. during the academic year 1983-84 held in April 1984 was cancelled and he was permanently debarred from appearing at any University Examination and from joining any affiliated college or Recognised Institution of South Gujarat University. This order has been passed as the petitioner in this case also was found guilty of using unfair means at the examination.

2. The only contention raised by the learned counsel for the petitioners is that the penalty of debarring the petitioners permanently from appearing in any university examination and from joining any affiliated college or recognized institution is highly disproportionate to the guilt and that it is a penalty which would be shocking the judicious conscience of the Court. On the other hand the learned counsel for the respondents supported the order which has been passed by the University against the petitioners.

3. I have given my thoughtful consideration to the contention raised by the learned counsel for the petitioner. It is true that normally in the matter of penalty which may be given by the University to a student who was found guilty of using unfair means at the examination this court should not interfere. But where the penalty is very harsh and shocking the judicious conscience of this court certainly this Court can interfere with the same. The petitioners were found guilty of using unfair means at the examination, but the penalty of cancellation of that examination and debarring them permanently from appearing in any university

examination and joining any affiliated college or recognized institution is arbitrary. It is the case of students who were found using unfair means at the examination, but the penalty should not be of a nature whereby they are permanently debarred from taking any education from the affiliated colleges or appearing in the university examinations. In such cases the punishment should be of such nature that the petitioners learn the lesson and the same should deter them from repeating such defaults in future. More than twelve years have already passed and this time is more than sufficient punishment to the petitioners. I find sufficient justification in the contention raised by the learned counsel for the petitioners that the penalty which is given to the petitioners is disproportionate to the guilt. Even in the case of a convict under section 302 I.P.C. who has been given punishment of imprisonment for life, by legal fiction, the confinement will be over on completion of 14 years. If 14 years is considered as the period of life imprisonment for an offence under section 302 I.P.C., the penalty of debarring the petitioners permanently from appearing at university examination and from joining any affiliated college or recognized institution of the respondent University is certainly highly excessive, disproportionate to the guilt, and shocking the judicious conscience of the Court.

4. In the result these writ petitions succeed in part. The orders impugned in these petitions are maintained, but the penalty imposed by those orders is modified and it is hereby ordered that the penalty imposed on the petitioners in both the writ petitions should be read to the extent of debarring the petitioners from appearing at any university examination till the academic year ending May 1996. This penalty will not come in the way of the petitioners in any manner in seeking admission in accordance with law in any affiliated College or recognized institution of South Gujarat University or appearing in the examinations to be held by the University in future. Admission shall be on the basis of prevalent rules and this order may not be taken as direction to the colleges, institutions or the University to give admission to the petitioners. Rule made absolute in the aforesaid terms. No order as to costs.

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